

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Terry Scott Fox,

Petitioner,

v.

Case NO. 2:19-cv-206

Ohio Adult Parole Authority,

Respondent.

ORDER

Petitioner, a state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, seeking to challenge his 2013 convictions for gross sexual imposition and intimidation in the Court of Common Pleas for Licking County, Ohio. In a report and recommendation filed on February 14, 2019, the magistrate judge observed that petitioner had filed a previous petition under §2254 in this court challenging the same convictions. See *Fox v. Warden, Belmont Corr. Inst.*, 2:15-cv-3074, Doc. 1. The magistrate judge correctly noted that unless the court of appeals has given approval for the filing of a second or successive petition, a district court in the Sixth Circuit must transfer a successive petition to the United States Court of Appeals for the Sixth Circuit. See *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). The magistrate judge recommended that the instant petition be transferred to the Sixth Circuit Court of Appeals as a successive petition.

The report and recommendation specifically advised plaintiff that objections to the report and recommendation were due within fourteen days, and that the failure to object to the report and recommendation would result in a waiver of the right to have the district judge review the report and recommendation *de novo* and a

waiver of the right to appeal the decision of the district court adopting the report and recommendation.

On February 19, 2019, the clerk docketed a letter from the defendant in which he stated that he was currently at the VOA (Volunteers of America) facility in Mansfield, Ohio, a post-release community facility. *See Doc. 6.* Petitioner stated that he does not have access to a law library there, which has denied him the ability to contest the denial of his liberty in the first case. He also stated that he has served his sentence, that he never consented to post-release control, and that he saw no authority in the post-release control guidelines for his continued detention. In this letter, petitioner appears to be asserting a new claim concerning his continued confinement following his release from the Licking County facility. However, in this letter, he makes no reference to the report and recommendation or to any objections to the report and recommendation which he wishes to research or file. Objections to the report and recommendation were due by February 28, 2019, and no objections have been filed. Even construing petitioner's letter as an objection, he presents no argument contesting the magistrate judge's conclusion that the petition filed in the instant case is a second or successive petition challenging the same convictions.

Accordingly, the court adopts the report and recommendation (Doc. 5), and the motion for leave to file the instant petition for a writ of habeas corpus is hereby transferred to the United States Court of Appeals for the Sixth Circuit.

It is so ordered.

Date: March 7, 2019

s/James L. Graham
James L. Graham
United States District Judge